IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 630

WILBERT RIDEAU,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE PETITIONER

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Opinions Below

The opinion of the Supreme Court of the State of Louisiana (R. 693-718) is reported at 137 So.2d 283.

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered on January 15, 1962, and a petition for rehearing was denied on February 19, 1962 (R. 727). The petition for a writ of certiorari was filed May 17, 1962, and was granted December 3, 1962. The jurisdiction of this Court rests on 28 U.S.C. 1257 (3).

Questions Presented

Whether Petitioner's rights under the United States Constitution, particularly the Fourteenth Amendment thereto, were violated:

(1) By the Trial Court's failure to grant Petitioner a change of venue where the facts showed the Petitioner could not reasonably receive a fair and impartial trial in Calcasieu Parish, Louisiana, where the crimes occurred, after a motion picture film on sound track wherein he confessed to the crimes was shown via the television medium to the entire populace from which the jury was drawn.

(2) By failing to exclude one written confession and several oral confessions or admissions, which were extracted from Petitioner before he had the benefit of counsel and without properly apprising him of his rights.

(3) By the Trial Court's failure to appoint counsel for Petitioner until after the aforesaid confessions and not until after he was allowed to plead guilty to the charge of armed robbery, which, under the circumstances existing, constituted a capital crime punishable by death.

(4) By the Trial Court's failure to grant Petitioner's timely challenge to three (3) jurors who had admitted seeing a television film with sound, wherein the Petitioner, while being interviewed by the Sheriff of Calcasieu Parish, admitted the commission of the crimes, and, also, by the Court's failing to exclude two (2) jurors who, in fact, held commissions as Deputy Sheriffs of Calcasieu Parish, Louisiana.

Statutes Involved

The Constitution of the United States, Amendment Fourteen, reading in pertinent part as follows:

"Section 1. Due Process of Law. * * * Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S.C.A. Const. Amend. 14.

Statement

A bank robbery, kidnapping and homicide were committed on the late evening of February 16, 1961, and several hours later the Petitioner, a nineteen (19) year old colored boy, was apprehended, arrested and confined in the Parish jail in Lake Charles, Calcasieu Parish, Louisiana (R. 582). Without the benefit of counsel or of being advised of his rights to counsel, the Petitioner made both oral and written confessions (State's Exhibit 17, R. 370-373).

On the next morning, February 17, 1961, a moving picture film with sound track of approximately twenty (20) minutes duration was made of an interview between the Sheriff of Calcasieu Parish and the Petitioner, which interview took place in the Parish jail, where the Petitioner was interrogated and confessed to the commission of the three (3) crimes with which he was later charged (R. 485, 585-586). Petitioner had not yet had the benefit of counsel.

This film was shown over a local television station on three (3) different occasions to a wide viewing and listening audience throughout Southwest Louisiana, and, particularly, Lake Charles, Louisiana, where the Petitioner was ultimately tried (R. 483-489). The film was first shown on television on February 17, 1961, and on that date 24,000 persons viewed this film. It was next shown on television on February 18, 1961, and on that date 53,000 persons viewed this film, and it was finally shown on television on

February 19, 1961, and at that time 29,000 persons viewed this film (R. 484-489).

According to the 1960 Census, Calcasieu Parish, Louisiana, has a population of 145,474 persons (R. 581).

Thereafter, on March 3, 1961, Petitioner was arraigned on an indictment, including counts of (1) murder, (2) kidnapping and (3) armed robbery (R. 6), and was allowed to plead guilty to the third count of armed robbery (R. 7), which plea was subsequently aired in the local newspapers in Lake Charles, Louisiana, and Southwest Louisiana (Defendant's Exhibits Nos. 1 and 4, R. 241). *After* the Petitioner was arraigned, counsel was appointed to represent him, he being an indigent person (R. 7).

Counsel for Petitioner filed a motion for a change of venue on the ground that, because of the wide publicity given to this matter, and, in particular, the showing of the moving picture film with sound track on the local television station wherein the accused confessed to the crimes with which he was subsequently charged, and on the ground that the Petitioner had pleaded guilty to the count of armed robbery and great publicity had been given to this fact in the local newspaper, prevented the Petitioner from obtaining a fair and impartial trial in Calcasieu Parish, Louisiana, and to force the Petitioner to trial in the Parish of Calcasieu would be a violation of his rights and guaranties provided for him under the Constitution of the United States (R. 61-68, 71-75).

After a hearing was had on this motion for a change of venue, the Trial Judge overruled the same and in his per curiam stated that the Petitioner could obtain a fair and impartial trial in Calcasieu Parish, Louisiana (R. 242-244), and the State Supreme Court held that the Trial Judge did not commit any error (R. 696).

On the matter of the State's failure to timely appoint counsel to represent Petitioner, Petitioner filed a motion to estop the State from seeking the death penalty on the grounds that such failure on the part of the State deprived Petitioner of his State and Federal Constitutional guaranties (R. 280-283). The Trial Court denied the motion (R. 287) and the State Supreme Court affirmed the Trial Judge's action (R. 698-700).

During the course of the trial the State offered into evidence a written confession made by the Petitioner shortly after his apprehension in the Parish jail, and, also, certain oral confessions or admissions made by the Petitioner to the Sheriff of Calcasieu Parish, Louisiana, while he was en route to the Parish jail.

Counsel for Petitioner objected to the introduction of this written confession and oral confession on the ground that they were not freely and voluntarily given for the reason that the Petitioner was not advised of his right to counsel prior to the time of making the written and oral confession to the Sheriff of Calcasieu Parish, Louisiana, nor was he advised that he need not make any statement at all (R. 368).

The Trial Judge held that the written and oral confessions made to the Sheriff of Calcasieu Parish, Louisiana, were freely and voluntarily given and admitted the same into evidence (R. 388-389), and counsel for Petitioner objected to the same and reserved a bill of exception (R. 387). The State Supreme Court found that the Trial Judge did not commit any error in admitting into evidence these confessions and admissions (R. 713-715).

The jury which ultimately tried the Petitioner and found him guilty as charged, which required the mandatory sentence of death, was composed, among others, of three

(3) persons who saw on at least one occasion the television film with sound track (R. 363) and two (2) Deputy Sheriffs of Calcasieu Parish, Louisiana (R. 333-338). The Petitioner, having exhausted all of his pre-emptory challenges, challenged these jurors for cause and the Trial Judge refused to grant the challenge (R. 337, 342, 366), and the State Supreme Court held that the Trial Judge did not commit any error (R. 708, 711).

Summary of Argument

I. A defendant in a State criminal trial has the right under the due process clause of the Fourteenth Amendment to a fair and impartial jury trial in a place beyond the probable influence of any adverse and prejudicial publicity. See concurring opinion in *Shepherd v. State of Florida*, 341 U.S. 50, 71 S.Ct. 549; 95 L.Ed. 740.

Certainly in this case the Petitioner's rights were prejudiced by showing the film on television during which the Petitioner confessed to the alleged crimes in the presence of the Sheriff and other law enforcement officers, for the reason that the jurors, who were selected, and who later tried the Petitioner, resided within the area which was permeated by this adverse television publicity.

II. A defendant, especially charged with a capital crime, has the right under the due process clause of the Fourteenth Amendment to be represented by counsel during all of the proceedings taken against him. The fact that the Petitioner made oral and written confessions prior to being represented by counsel and prior to being informed of his rights or that he need not make any statement whatsoever, were prejudicial. See *Gallegos v. State of Colorado*, —— U.S. ——, 82 S.Ct. 1209, —— L.Ed. ——.

III. In addition, the Petitioner's rights were further prejudiced by permitting him to plead guilty to the charge of armed robbery prior to being represented by counsel, especially since the robbery was but a part of a series of acts which led up to the homicide and, under the circumstances, constituted a capital crime punishable by death.

The fact that this guilty plea was later withdrawn at the discretion of the Court did not absolve the prejudice which was caused. See *Machibroda* v. *U. S.*, —— U.S. ——, 82 S.Ct. 310, 7 L.Ed.2d 473; also, *Carnley* v. *Cochran*, —— U.S. ——, 82 S.Ct. 884, 8 L.Ed.2d 70; also, *McNeal* v. *Culver*, 365 U.S. 109, 81 S.Ct. 413, 5 L.Ed.2d 445.

In the recent expressions of this Court, prejudice will be presumed where a defendant charged with a capital crime is not represented by counsel during every part of the proceedings against him. See *Uveges* v. *Pennsylvania*, 335 U.S. 437, 69 S.Ct. 184, 93 L.Ed. 127; *Powell* v. *State of Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158; and *Hamilton* v. *State of Alabama*, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114.

IV. The Petitioner's rights were further prejudiced by being forced to trial before a jury which included three (3) members who had seen the television film, wherein the Petitioner confessed in the presence of the Sheriff of Calcasieu Parish to the commission of the crimes for which he was later indicted, and, also, which included two (2) members who held commissions as Deputy Sheriffs of Calcasieu Parish, Louisiana. This jury could not possibly meet the test of impartiality and fairness, which this Court has stated on many occasions must be present to afford a defendant the protection of due process. See *Irvin* v. *Dowd*, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751.

ARGUMENT

I.

Petitioner's First Person Confession Via Television Precluded Any Chance of His Obtaining a Fair and Impartial Trial and Entitled Him to a Change of Venue.

Following Petitioner's arraignment in the Trial Court, his counsel were appointed. One of the first steps taken on behalf of Petitioner was a request for a change of venue in accordance with applicable Louisiana Statutes.[1] The request was denied and the Louisiana Supreme Court upheld the ruling of the Trial Court.

Without any showing in the record that the Petitioner was aware of actually what was being done, the day following the crimes and the Petitioner's apprehension, he made a confession in the presence of the Sheriff, the chief law enforcement officer in Calcasieu Parish, in which he admitted the commission of the three (3) crimes, which formed the indictment brought against him, and gave details concerning the commission of said crimes. This film made with a sound track was later shown via the only television station in Lake Charles, Louisiana, to the populace of that City and the surrounding areas on three (3) occasions at times anticipated to attract a wide viewing and listening audience. The evidence showed that this purpose was accomplished, i.e., it was seen by a large number of persons. In addition to this television film, the Petitioner, when arraigned, at a time when he did not have counsel, was permitted to plead guilty to the third count of the indictment brought against him by the Grand Jury, namely, armed robbery. This was subsequently aired in

[1] Louisiana Revised Statutes 15:293.

the only daily newspaper published in Lake Charles, Louisiana, and in the newspaper published in Beaumont, Texas, some sixty (60) miles away, but which enjoys a considerable undisclosed circulation in the Lake Charles and Calcasieu Parish areas.

This is not a situation where the publicity attendant to a crime and one accused of that crime involves mere newsreels of the accused in the custody of law enforcement officers, or of scenes of the accused being taken to or from the local place of incarceration or even of the accused taking the Fifth Amendment before the television cameras, which this Court held not to be prejudicial in the *Beck* case,[2] but this is a situation involving not only the picture of the Petitioner but his voice tied together admitting the commission of three (3) heinous crimes, including murder, aggravated kidnapping and armed robbery, which, under the circumstances and our law, is also a "felony murder".[3]

We can find no reported case coming from any State or through the Federal Court system where such a deprivation of rights has ever occurred. Nor are we before this Court seeking to assess blame. We are only concerned with the results which we feel logically and normally followed.

Aside from the other ways in which this television confession infringed on the Petitioner's rights under the Fourteenth Amendment, we feel that such a confession under the facts and circumstances of this case, notwithstanding the findings of the Trial Judge, are such that the film so permeated the people in this area generally that it made the conviction of the Petitioner an accomplished fact, and that there was no need for a mob to pound on the door of the jail demanding the prisoner, or to engage in any of

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[2] *Beck* v. *Washington*, —— U.S. ——, 82 S.Ct. 955, 8 L.Ed.2d 98.

[3] Louisiana Revised Statutes 14:30.

the other acts discussed in the concurring opinion of *Shepherd* v. *State of Florida*, 341 U.S. 50, 71 S.Ct. 549, 95 L.Ed. 740, and we do not think that the basis of the Trial Court's opinion that lay witnesses testified that they thought this man would get a fair and impartial trial, notwithstanding the attendant publicity, both by way of the television media and newspapers, conforms to our everyday experiences as human beings.

Actually, in our opinion, a fair and impartial jury was not impaneled in the sense that it was one that was going to decide the case solely on the evidence, since one-fourth of the jurors actually saw and heard the television film which lasted approximately twenty (20) minutes and in which the Petitioner convicted himself in the minds and before the eyes of most of the persons in this area.

II.

An Accused in a Capital Case Has the Right to Be Represented by Counsel at Every Step of the Proceedings Against Him.

The matter of an accused being entitled to counsel at all stages of the proceedings against him and the fundamental principle that an accused's inculpatory admission or confession may not be used against him unless made freely and voluntarily are so intertwined in the instant case that we will discuss these two (2) questions together.

We did not, in the Lower Court, nor do we now claim that the Petitioner received any physical mistreatment during the time that he made his oral admissions and confessions. We know that interrogating suspects is the standard police procedure in investigation of the commission of all crimes. At no time when he was making his oral admissions while in an automobile with the Sheriff of Calcasieu Parish and a

Deputy Sheriff, traveling from the Town of Iowa, some twelve (12) miles from the Parish Courthouse to the jail, was the Petitioner advised of his right to seek counsel or asked if he desired counsel. At no time was he advised that he did not have to say anything. Once he had made his oral admissions and later an oral confession, and during the time that intervened while the oral confession was being typewritten, his inquisitors were ingratiating to this poorly educated indigent colored boy, unfamiliar with Police methods and any of his constitutional rights. His greatest need at this time was counsel to represent him.

It would not appear that the Fourteenth Amendment would have one standard for the poor, uneducated or guileless accused on the one hand and a different standard for the rich, intelligent or otherwise experienced accused on the other.

Unless the Petitioner is advised that he need not make a statement, unless he is advised that he is entitled to counsel, and unless he is made aware of the consequences of his inculpatory statements or confessions, we think such statements or confessions are, in fact, involuntary. Otherwise, there arises a "fundamental unfairness", which the Fourteenth Amendment forbids. See *Blackburn* v. *State of Alabama*, 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242.

This Court has held that if an involuntary confession is introduced at the trial, a judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict. See *Malinaski* v. *People of the State of New York*, 324 U.S. 401, 65 S.Ct. 74, 89 L.Ed. 1029.

On the matter of an accused being entitled to counsel, in *Powell* v. *State of Alabama*, 287 U.S. 45, 69, 53 S.Ct. 55, 64, 77 L.Ed. 158, 170, this Court said:

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law * * * He lacks both the skill and knowledge adequately to prepare his defense even though he have a perfect one. *He requires the guiding hand of counsel at every step in the proceedings against him.*" (Emphasis ours.)

The record clearly shows that the Petitioner did not have counsel until long after his arrest, after he had made his oral and written confessions to the Sheriff, including the sound film, which was later shown on television throughout the area, and after he had been indicted by a Grand Jury and permitted to plead guilty to the charge of armed robbery, all of which was a violation of the rights of the Petitioner under the due process clause of the Fourteenth Amendment.[4]

This Court has said that a plea of guilty differs in purpose and effect from a mere admission or an extrajudicial confession; it is itself a conviction. Like a verdict of a jury it is conclusive. See *Machibroda* v. *U. S.*, —— U.S. ——, 82 S.Ct. 510, 7 L.Ed2d 473.

When the Petitioner in the present case pleaded guilty to the charge of armed robbery, which was part of a series of acts which led up to the charge of murder, for which he was subsequently tried and convicted, this was conclusive and the Court could have, at this stage of the proceedings, sentenced him on this charge.

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[4] See *Spano* v. *People of New York*, 360 U.S. 317, 79 S.Ct. 1202, 3 L.Ed.2d 238, in which the concurring opinions held that the accused after indictment was entitled to counsel at all times and a confession made thereafter but before arraignment was involuntary since accused's counsel was not present.

Although subsequently the Petitioner was permitted to withdraw his plea of guilty to the crime of armed robbery, after his counsel were appointed, the withdrawal of this plea was a matter solely within the discretion of the Trial Court. Louisiana Statutes Annotated 15:266. Subsequently, pleas of not guilty and not guilty by reason of insanity were entered. Since the original plea of guilty, however, was aired over all news media, including radio, newspapers and television, it becomes manifestly clear that the subsequent withdrawal of this plea so that pleas of not guilty and not guilty by reason of insanity could be entered, became mere "lawyer's pleas" in the minds of the general public. It is difficult for us to point our finger at just where the prejudice occurred, but often it is difficult to pinpoint the existence or presence of prejudice. Reason and common sense would indicate that prejudice resulted.

This Court has indicated that the failure of a Trial Court to afford counsel in State criminal trials where serious offenses are charged (less than capital offenses), deprives the accused of his rights under the Fourteenth Amendment. See *Uveges* v. *Pennsylvania*, 335 U.S. 437, 69 S.Ct. 184, 93 L.Ed. 127; *Palmer* v. *Ashe*, 342 U.S. 134, 72 S.Ct. 191, 96 L.Ed. 154. Certainly the same holdings should apply to a capital case. Nor is it incumbent upon the Petitioner to show the existence or resulting prejudice suffered by him through the violation of this fundamental right. This was succinctly set forth in *Hamilton* v. *State of Alabama*, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114, 117, wherein the Court made the following statement:

> "When one pleads to a capital charge without benefit of counsel, we do not stop to determine whether prejudice resulted."

This was reaffirmed in the case of *Walton* v. *State of Arkansas*, —— U.S. ——, 83 S.Ct. 9, —— L.Ed.2d ——.

Failure to advise the Petitioner of his right to counsel at the time he was making any oral or written confessions and the television confession in the presence of the Sheriff, and failure to provide counsel until after arraignment, at which time Petitioner pleaded guilty to a charge of armed robbery, which amounted to a felony murder, was a denial of the fundamental rights inherently enjoyed by every individual under the due process clause of the Fourteenth Amendment.

III.

Petitioner Was Not Tried by a Fair and Impartial Jury.

After all peremptory challenges were exhausted and after the Trial Judge had denied challenges for cause, the Petitioner was forced to go to trial before a jury, which included three (3) persons who had seen and heard the television confession and two (2) Deputy Sheriffs.

We appreciate the fact that because of the swift and widespread methods of communications, it would be difficult to obtain a jury who had not heard or read anything about the case. Under the laws of the State of Louisiana and of the United States a juror may not be challenged for cause if he testifies that he can lay aside any impression or opinion that he has, and can render a verdict based upon the evidence presented in Court.

It is one thing for a prospective juror to have read about the case or to have heard a news commentator on radio or television, but, in this case, the three (3) persons who saw and heard the television confession actually saw and heard the Petitioner in the presence of the Sheriff confessing to the crime of murder and the other crimes with which he was later charged. Can it be said that this was a fair and impartial jury, or was the Petitioner convicted before the

jury heard the case? Could these jurors give the Petitioner the benefit of innocence until he was proven guilty?

We believe that these jurors were sincere when they testified on examination that they could set aside the opinion or anything which they had heard and decide the case on the evidence to be presented in Court, but as this Court said in *Irvin* v. *Dowd*, 366 U.S. 717, 728, 81 S.Ct. 1639, 1645, 6 L.Ed.2d 751, 759:

> "No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one's fellows is often its father. Where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight. As one of the jurors put it, 'You can't forget what you hear and see.'"

Having heard and seen Petitioner on television confess to the crime, it is not normal human behavior to remain unaffected to such an extent that the juror would not be affected in making his decision as to the guilt or innocence of the Petitioner. After he had confessed, it is incomprehensible to us that these three (3) jurors could afford the Petitioner the presumption of innocence until he was proven guilty, or would decide the case solely from the evidence adduced during the trial.[5]

And if this prejudice was not enough, Petitioner's rights were further prejudiced by having two (2) Police officers on the jury that convicted him. The fact that these two

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[5] *Irvin* v. *Dowd*, *supra* (concurring opinion); *Janko* v. *U. S.*, 366 U.S. 716, 81 S.Ct. 1662, 6 L.Ed.2d 846; *Marshall* v. *U. S.*, 360 U.S. 310, 79 S.Ct. 1171, 3 L.Ed.2d 1250; see, also, *Stroble* v. *California*, 343 U.S. 181, 198, 72 S.Ct. 599, 96 L.Ed. 872 (dissenting opinion); *Shepherd* v. *State of Florida*, 341 U.S. 50, 71 S.Ct. 549 (concurring opinion), 95 L.Ed. 740.

(2) jurors were not remunerated by the Sheriff's office is of no moment. They certainly would be more inclined to give greater weight to the evidence and testimony produced by other law enforcement officers and by the witnesses for the State.

Perhaps the record concerning the number of prospective jurors called and turned down because of having fixed opinions, the quality and nature of the fixed opinions, or for other reasons is not as complete as it should be or as it was in the *Dowd* case; however, Petitioner's request made at the outset of the trial that a complete transcript of the entire case, including voir dire examinations of prospective jurors, be made was denied by the Trial Court, because of Petitioner's lack of funds to pay for the transcript of all of the proceedings.*

We have failed to find any State or Federal case which permitted law enforcement officers from the Sheriff's office in the place where the crime was committed to sit on the jury. But to permit such action, in our opinion, would abridge the safeguards which give to every accused person the right to a fair and impartial trial under the due process of law. As this Court said in *Irvin* v. *Dowd*, 366 U.S. 717, 727, 81 S.Ct. 1639, 1645, 6 L.Ed.2d 751:

> "Where one's life is at stake—and accounting for the frailties of human nature—we can only say that in the light of the circumstances here the finding of impartiality does not meet constitutional standards."

Certainly the constitutional standards of fair play were not present when the Petitioner was forced to go to trial

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* Bill of Exception raised in the Trial Court (R. p. 302). The Louisiana Supreme Court when reviewing this Bill merely held that the Bill of Exception was without merit, since its appellate review is limited to matters of law alone, 242 La. 431, 137 So.2d 283, 291.

before this jury which included three (3) persons who had seen and heard him confess on television, and two (2) Police officers.

Conclusion

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed and Petitioner granted a new trial.

Respectfully submitted,

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BRIEF FOR THE RESPONDENT.

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SUBJECT INDEX.

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BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinion of the Supreme Court of Louisiana is reported at 137 So. (2d) 283.

JURISDICTION.

The jurisdiction is correctly stated in the petition.

STATEMENT OF FACTS.

On February 16, 1961, petitioner, Wilbert Rideau, a young man nineteen years of age, entered the Gulf

National Bank of Lake Charles, Louisiana, at approximately 6:55 P. M. At pistol point, he forced three employees of the bank, Julia Ferguson, Dora McCain and Jay Hickman, to fill a suitcase with money. He forced them into Julia Ferguson's automobile and directed them at pistol point to an uninhabited area in northeast Lake Charles, Louisiana. He then ordered them out of the car, lined them up three abreast and fired six shots at them. Jay Hickman ran to his right and fell into a bayou; Dora McCain fell directly in front of Rideau on the west shoulder of the road, and Julia Ferguson fell near Dora McCain. When Julia Ferguson attempted to rise to her knees, petitioner Rideau stabbed her to death with his hunting knife. A few hours later Rideau was arrested and transported from Iowa, Louisiana, to Lake Charles, Louisiana. He freely and voluntarily confessed to the armed robbery, the kidnaping and the murder. On the following morning, a television station located in Lake Charles, Louisiana, televised interrogation of Rideau by Sheriff Reid of Lake Charles. Again, Rideau confessed his part in these crimes in the presence of the TV cameras. This twenty-minute news telecast was then broadcast three times over the Lake Charles television station. Rideau was subsequently indicted in a three-count indictment: count one, murder; count two, aggravated kidnaping, and count three, armed robbery. Rideau pleaded not guilty on the first two counts and entered a plea of guilty to armed robbery. The Court then appointed two qualified attorneys to represent Rideau. These attorneys

requested permission to withdraw the plea of guilty to armed robbery, which motion was granted. They then filed a motion to quash, and the state was ordered to elect under what count it wished to proceed. The state chose to proceed on the murder count, and the trial was accordingly set down.

Defense counsel then moved for a change of venue. The Court conducted a lengthy hearing, and, after hearing the testimony of twenty-nine witnesses and stipulating as to the testimony of five more, the Court determined that the defendant and your petitioner could get a fair trial in the Parish of Calcasieu and denied the motion for a change of venue. Thereupon a jury was empaneled, the trial held, and the defendant and your petitioner was found "guilty as charged." An appeal was taken to the Supreme Court of Louisiana, based upon thirty-four bills of exception to various rulings of the trial Court, all of which bills were thoroughly considered and passed upon by the Supreme Court of Louisiana. The lower Court's judgment and sentence were affirmed. A petition for rehearing was denied on February 19, 1962, and the petition for a writ of certiorari was filed in this Honorable Court on the 17th day of May, 1962. Certiorari was granted on December 3, 1962.

QUESTIONS PRESENTED.

Petitioner raises four questions alleging violation of petitioner's rights under the United States Constitution, particularly the Fourteenth Amendment thereto. Question No. 1 questions the trial Court's failure to grant

a change of venue because of the telecast referred to in the Statement of Facts. Question No. 2 goes to the admissibility of several oral questions which admittedly were freely and voluntarily made prior to the appointment of counsel to represent defendant petitioner. Question No. 3 goes to the trial Court's failure to appoint counsel before the confessions were made and not until after a plea of guilty to armed robbery had been entered. Question No. 4 goes to the failure of the trial Court to sustain petitioner's challenge of three jurors who had seen the telecast and the failure of the trial Court to sustain challenge of petitioner to two jurors who held honorary commission as deputy sheriffs of Calcasieu Parish, Louisiana.

ARGUMENT.

We do not believe that we can improve on the opinion of the Supreme Court of Louisiana passing upon the question of change of venue in this case. We quote from the decision as follows:

> "In the case of State v. Scott, 237 La. 71, 110 So. (2d) 530, this Court (Supreme Court of Louisiana) stated the rule applicable to a change of venue: 'The burden of establishing that an applicant cannot obtain a fair trial in the parish where the crime was committed rests with him. The test is whether there can be secured with reasonable certainty from the citizens of the parish, a jury whose members will be able to try the case on the law and

evidence uninfluenced by what they may have heard of the matter and will give the accused full benefit of any reasonable doubt arising from the evidence or the lack of it. State v. Rini, 153 La. 57, 95 So. 400, and State v. Faciane, 233 La. 1028, 99 So. (2d) 333 and authorities there cited. The power to grant a change of venue rests in the sound discretion of the trial judge whose ruling will not be disturbed in the absence of the showing of clear abuse thereof.' "

In defendant's brief, it is intimated that the newscasts were intended and designed to prejudice the defendant. There is no basis for this assumption in the record.

The television newscasts have relevance only to the motion for a change of venue. There is no constitutional right to protection against publicity.

Whether or not there is a sufficient basis for a change of venue is a question of fact. This question has been resolved adversely to the defendant by the trial Court, who heard the witnesses, and the highest court of the state.

We would like to remind the Court that twenty-nine witnesses were heard on this point, twenty-four swore that the defendant petitioner could get a fair trial; only five were of the opinion that he could not get a fair trial.

Petitioner's brief points out to this Court that a large number of the people who live in Calcasieu Parish saw one or more of these telecasts.

It was also proven that there was tremendous newspaper coverage because this was an abhorrent crime, but where is the deprivation of petitioner defendant's constitutional right? He was not forced to go on television. He was not forced to confess. He was not coerced. He was not cajoled. He was not threatened. All that he needed to do was to refuse, and he would not have been on television. All that he had to do was to decline to confess and there would have been no confession. Even the learned counsel for petitioner defendant stated in their petition for writ of certiorari, on page 11, and we quote:

> "We did not in the lower court nor do we now claim that petitioner received any physical mistreatment during the time he made his oral admissions and confessions. In fact, his inquisitors were ingratiating to this poorly educated indigent colored boy, unfamiliar with police methods and his right to remain close-mouthed and to have counsel if he desired."

In this connection, we must point out that this young man of nineteen years of age had better than an eighth grade education, a "B" average in school, and at the time of the commission of the crime was gainfully employed.

Respondent can see no violation of any constitutional right in the trial Court's denial of the change of venue request.

Question No. 2 in connection with the admission of the several oral confessions over the objection of petitioner respondent we respectfully point out that we agree with the Supreme Court of Louisiana in this matter, and we quote:

> "In brief in this Court it is admitted by defendant that no physical force or duress was used in obtaining these admissions and confessions, but it is contended that he was not advised of his right to have counsel and that what he said would be used against him.
>
> **"Sheriff Reid testified that when the formal confession of February 16, 1961, was read to defendant he was advised that he did not have to make a statement and any statement so made could be used in court against him. At no time was he advised that he was entitled to have counsel nor asked if he wanted counsel. Deputy Barrios, the two FBI agents, the sheriff's secretary, and all parties present testified that no force or violence was used in obtaining the confessions.**
>
> "This Court said in State v. Sheffield, 232 La. 53, 93 So. (2d) 691:
>
> > " 'The objection to the admissibility of the confession on the ground that the statement itself does not show that all of the rights of the accused party were made known to him at the commencement of the taking of the statement, or that the accused was informed that at the time of giving the statement he was entitled to have a lawyer of his own choosing present, or that

the court would be required to appoint a lawyer to assist him in the defense of his case is without merit.

"'An examination of the written confession shows that the accused party was fully informed of all of his rights. Further, the evidence taken on the hearing to determine whether or not the confession was admissible abundantly shows that the accused was informed by the district attorney that his statement would be used against him, both at the grand jury investigation of the matter and in court at the trial of the case if he was indicted, **notwithstanding that the accused is not entitled to be informed that a voluntary confession might or will be used against him.** State v. McGuire, 146 La. 49, 83 So. 374; State v. Burks, 196 La. 374, 199 So. 220; State v. Byrd, 214 La. 713, 38 So. (2d) 395; State v. Alleman, 218 La. 821, 51 So. (2d) 83.'

"The fact that the defendant was handcuffed at the time he made certain admissions does not render the confession inadmissible. See State v. Joseph, 217 La. 175, 46 So. (2d) 118.

"The court correctly ruled that these bills are without merit." (Emphasis ours.)

Again, we can see no violation of petitioner defendant's constitutional rights.

We proceed to question No. 3, which goes to the appointment by the trial Court of counsel for defendant petitioner

Louisiana Revised Statutes 15:143 provides:

> "Assignment of counsel in felony cases—
>
> "Whenever an accused charged with a felony shall make affidavit that he is unable to procure or employ counsel learned in the law, the Court before whom he shall be tried, or some Judge thereof, shall immediately assign to him such counsel; provided that if the accused is charged with a capital offense the Court shall assign counsel for his defense of at least five years actual experience at the Bar."

In this connection, we would like to point out that ordinarily the trial Court in Louisiana does not know until the date of arraignment whether or not it is necessary to appoint counsel. The normal procedure is for a defendant to be called to the Bar, and, as in this case, the entire information or indictment is read to the defendant. At the conclusion of the reading, the clerk asks the defendant, "How do you plead?" And usually the defendant pleads, "Not guilty." Immediately, the clerk asks, "Who is your lawyer?" Frequently, the defendant will state the name of his lawyer, if he has one, and the defendant will then be requested to have his attorney put his name on the record. If the defendant states that he does not have a lawyer, the Court must determine whether or not he can afford a lawyer. If he cannot, the Court appoints competent counsel. If, however, for any reason, the Court feels that it would be to the best interest of the state and the defendant to have an attorney be appointed, it is within the Court's sound discretion so to do.

Therefore, when this particular defendant petitioner pleaded not guilty, which is mandatory in capital offenses, to the first two counts, and then pleaded guilty to armed robbery, which, as compared to the first two, is a mere felony, then and only then could the trial Court be in a position to know that it was necessary and advisable to appoint counsel. Appoint counsel the trial Court immediately did, and we might add the trial Court appointed outstanding counsel. The Court permitted them to withdraw the plea of guilty.

Question No. 4 goes to the refusal of the trial Court to sustain challenges of five jurors, three of whom had seen the telecast, but each of whom swore that they could and would decide the case solely on the evidence adduced from the witness stand and that they could and would give the defendant petitioner a fair and impartial trial.

The other two challenged jurors were challenged merely because they had been given honorary commissions as deputy sheriffs issued by the sheriff of Calcasieu Parish. These jurors testified that they had no connection with the sheriff's department, made no arrests, received no pay, and the commissions were used by them for convenience only. Again, we can find no violation of the constitutional rights of the defendant petitioner.

CONCLUSION.

For these reasons, it is respectfully submitted that the decision of the Supreme Court of the State of Louisiana affirming the decision of the Fourteenth Judicial

District Court for the Parish of Calcasieu, State of Louisiana, be affirmed.

Respectfully submitted,

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CERTIFICATE.

I, Robert S. Link, Jr., member of the Bar of the Supreme Court, do hereby certify that a copy of the foregoing brief has been deposited in the United States mail, postage prepaid, addressed to James A. Leithead, Attorney at Law, P. O. Box 1209, Lake Charles, Louisiana, and Fred A. Sievert, Jr., Attorney at Law, P. O. Box 1209, Lake Charles, Louisiana.

ROBERT S. LINK, JR.

New Orleans, Louisiana.
This 4th day of March, 1963.